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U.S. DISTRICT COURT  
EASTERN DISTRICT  
OF NEW YORK

Frank J. Martinez (FJM-2149)  
THE MARTINEZ GROUP PLLC  
55 Washington Street, Suite 253-C  
Brooklyn, New York 11201  
718.797.2341 Telephone  
855.553.7004 Facsimile  
FM@martinezzgroup.com  
Attorney Docket: 1418-11

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

-----X	
<b>PABLO MEDINA d/b/a DESIGN IS CULTURE,</b>	<b>CV 14 5236</b>
Plaintiff,	:
-against-	:
	<b>COMPLAINT</b>
	:
<b>WALGREEN CO.,</b>	(Jury Trial Demanded)
	:
Defendant.	<b>GLASSER, J.</b>
-----X	

**ORENSTEIN, M.J.**

Plaintiff, PABLO MEDINA d/b/a DESIGN IS CULTURE ("MEDINA" or Plaintiff), by and through its attorneys, The Martinez Group PLLC, for its Complaint against Defendant, WALGREEN CO, ("WALGREENS" or "Defendant"), hereby alleges as follows:

**NATURE AND SUBSTANCE OF THE ACTION**

1. Plaintiff files this action against Defendant for Copyright Infringement under 17 U.S.C. §101, et seq. and unfair competition under applicable state law.
2. This action is brought in response to a classic case of Copyright infringement, specifically the unauthorized use, copying and distribution of Plaintiff's copyrighted software; namely, the unlicensed, unauthorized copying and use of Plaintiff's VITRINA

copyrighted typeface in WALGREENS retail stores and in the creation of WALGREENS online commercial website, [http://www. http://www.walgreens.com](http://www.walgreens.com) (“walgreens.com”).

Title 17 of the United States Code (Copyright Act) was enacted to provide remedies to copyright owners who suffer damages by reason of such actions.

3. Specifically, upon information and belief, Defendant has or has caused others to copy and create infringing copies of Plaintiff’s copyrighted VITRINA typeface font for use on and in connection with the sale of Defendant’s goods.
4. Plaintiff is the exclusive owner of the copyrights associated with the “Computer program for a VITRINA Typeface Font.”
5. Plaintiff is the exclusive owner of the rights to license, copy or distribute and license the use of copies of the VITRINA Typeface Font.
6. Title 17 of the United States Code was enacted to provide remedies to persons who suffer damages by reason of such actions.

#### **JURISDICTION AND VENUE**

7. This is an action for Copyright Infringement arising under 17 U.S.C. § 101 et seq. which seeks the disgorgement of revenues and profits together with damages, by reason of Defendant’s past and ongoing infringement of Plaintiff’s valid and subsisting copyright.
8. This Court has jurisdiction of this action under 28 U.S.C. §§1331, 1332, 1338(a), and its supplemental jurisdiction, and under Rule 4 of the Federal Rules of Civil Procedure.
9. Venue is proper in this district under 28 U.S.C. §1391 and §1400 in that Defendant or Defendant’s agents may be found in this District and, upon information and belief, Defendant transact business in this District.

### THE PARTIES

10. Plaintiff MEDINA is an individual doing business as DESIGN IS CULTURE and having a place of business located at 231 East 11<sup>th</sup> Street, New York, New York, 10003.
11. Plaintiff MEDINA formerly conducted business under the assumed name of CUBANICA.
12. Plaintiff conducts business throughout the world, the United States, the State of New York and the County of Kings via Plaintiff's commercial website on the Internet located at <http://www.designisculture.com> and by way of authorized third party distributors.
13. Plaintiff is, *inter alia*, a graphic product designer, type face font designer and design educator.
14. Plaintiff has created and licenses, among other products and services, custom typeface font software including, *inter alia*, the VITRINA typeface font software.
15. Plaintiff offers its typeface font software for licensing to the third parties directly via authorized distributors of such goods including MyFonts.com.
16. MyFonts.com is not a party to this action.
17. Defendant WALGREEN Co. ("WALGREENS") is a corporation organized under the laws of the State of Illinois with its principal executive offices located at 108 Wilmot Road, Deerfield, Illinois 60015.
18. Upon information and belief, Defendant WALGREENS is further authorized by the New York Secretary of State to conduct business in the State of New York.
19. Upon information and belief, Defendant WALGREENS operates approximately 8,582 locations in 50 states in the U.S. as well as, the District of Columbia, Guam and Puerto Rico.

20. Upon information and belief, Defendant WALGREENS conducts business in the United States, the State of New York, in the County of Kings, within the Eastern District.
21. Defendant WALGREENS also conducts business on the Internet via an Internet website located at <http://www.walgreens.com>.

#### **FACTS COMMON TO ALL CLAIMS**

22. Upon information and belief, Plaintiff changed its d/b/a from CUBANICA to DESIGN IS CULTURE on or about April 30, 2014.
23. Plaintiff is the creator of the VITRINA typeface font software.
24. Plaintiff has at all times been the exclusive owner of all right, title and interest in and to the VITRINA typeface font software.
25. Plaintiff is the exclusive owner of the U.S. Copyright Registration Serial Number TX 7-795-234 for the family of works entitled "Computer program for a VITRINA Typeface Font," a copy of which is annexed hereto as Exhibit A.
26. Plaintiff's software was granted registration on October 2, 2013.
27. A showing of Plaintiff's VITRINA typeface font is attached hereto as Exhibit B.
28. Plaintiff's copyright is valid and subsisting.
29. Plaintiff MEDINA controls the use of the VITRINA typeface font software by means of its Font Software End User License Agreement ("EULA"), which specifically prohibits the uses complained of herein without the purchase of a special license.
30. A copy of Plaintiff's EULA is annexed hereto as Exhibit C.
31. Plaintiff MEDINA has sold, continues to sell, and derives significant revenue from the sale of licenses to use its VITRINA typeface font software.

32. Plaintiff's records show Defendant has not purchase any licenses to use the individual VITRINA typeface font software.

#### **DEFENDANT'S ACTIONS**

33. Upon information and belief, Defendant has made and/or has caused others to make unauthorized and infringing copies of VITRINA typeface font software which as used in the creation of advertisements for "home movies," suncare products, pain relievers and other products, as well as for marketing and promotions purposes in its retail stores, copies annexed hereto as Exhibit D.
34. Plaintiff's records show no agreements, licenses or permissions to Defendant or its agents permitting the use of VITRINA typeface font software.
35. Defendant's unlicensed use of the VITRINA typeface font software in the manner complained of herein represents an ongoing infringement of Plaintiff's valid copyright in and to the VITRINA typeface font software.
36. The natural, probable, and foreseeable result of Defendant's wrongful conduct has, and continues to be, to deprive Plaintiff of the benefits and revenue from the sale of appropriate licenses to use the VITRINA typeface font software in the manner complained of herein.
37. Plaintiff has lost, and will continue to lose, substantial revenue from Defendant's wrongful use, copying, and distribution of the VITRINA typeface font software.
38. Defendant's wrongful conduct has and will continue to deprive Plaintiff of opportunities for expanding the goodwill associated with the VITRINA typeface font software.
39. Defendant has refused to cease and desist from infringing upon Plaintiff's valuable copyrighted work despite several demands for such action.

40. Plaintiff has no adequate remedy at law.

**FIRST CAUSE OF ACTION  
COPYRIGHT INFRINGEMENT  
17 U.S.C. §501, et seq.**

41. MEDINA repeats and realleges each and every allegation of the Complaint as set forth in Paragraphs 1 through 40, inclusive and incorporates them herein by this reference.

42. Upon information and belief, Defendant has willfully copied and infringed or willfully caused others to improperly copy and make infringing copies of Plaintiff's copyrighted software and use such infringing copies Plaintiff's copyrighted VITRINA typeface font software in the manners complained of herein.

43. Upon information and belief, Defendant's infringing activities have caused and, unless enjoined by this Court, will continue to cause, irreparable injury and other damage to Plaintiff's business, reputation and goodwill in its VITRINA typeface font software.

44. Plaintiff is entitled to recover damages it has sustained and will continue to sustain, together with any gains, profits, and advantages obtained by Defendant as a result of the acts of infringement alleged herein.

45. At present, the amount of such damages, gains, profits, and advantages cannot be fully ascertained by Plaintiff.

46. Plaintiff has no adequate remedy at law.

**WHEREFORE**, Plaintiff respectfully requests and prays that this Court will:

1. Preliminarily and permanently enjoin and restrain Defendant, its officers, directors, principals, agents, servants, employees, successors, assigns, and all those in active concert or participation with it from:

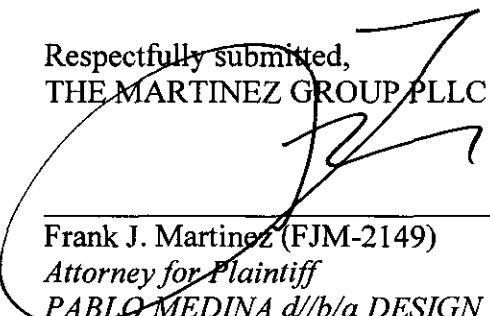
- (a) Copying, causing others to copy or using Plaintiff's Copyrighted VITRINA typeface font at any of its retail store outlets or in any of the websites owned or controlled by WALGREENS.
  - (c) Manufacturing, creating, producing, advertising, promoting, or displaying any product or internet display or website, bearing any simulation, reproduction, counterfeit, copy, derivative version, or colorable imitation Plaintiff's Copyrighted VITRINA typeface font
2. Direct that Defendant deliver to Plaintiff a schedule or list of those parties purchasing goods bearing the infringing use of Plaintiff's copyrighted VITRINA typeface font, which schedule or list will contain the name and address of the party purchasing such goods.
  3. Direct that Defendant destroy at Defendant's expense, *inter alia*, all computer files, hard drives, solid state drives, disks, CD-Rom's, DVD's, videotapes, and all other recorded media together with all other items, including but not limited to, digital copies, posters, signs, marketing materials and products in its possession or under their control that were created and advertised using Plaintiff's copyrighted VITRINA typeface font and certify the same.
  4. Direct the imposition of a constructive trust for all monies received by Defendant from the sale of all goods or services and advertising revenue from Internet website ad sales that were sold using Plaintiff's copyrighted VITRINA typeface font.
  5. Direct that Defendant be required to pay Plaintiff actual damages and enhanced damages or Statutory Damages under copyright law by reason of all gains, profits, and advantages derived by Defendant through their infringement of the copyrighted VITRINA typeface font.

6. Direct that Defendant be required to pay to Plaintiff such other damages that it has sustained as a consequence of Defendant's unauthorized uses of Plaintiff's copyrighted VITRINA typeface font.
7. Direct that Defendant be ordered to make a written report within a reasonable period of time to be filed with the Court detailing the manner of compliance with the requested injunctive and mandatory relief above.
8. Award Plaintiff actual or Statutory Damages under copyright law in the amount of \$150,100 together with the costs of this action together with reasonable attorneys' fees.
9. Award Plaintiff such other and further relief as the Court may deem just and proper.

### **JURY DEMAND**

Plaintiff, MEDINA, hereby demands a trial by jury.

Dated: September 8, 2014

Respectfully submitted,  
THE MARTINEZ GROUP PLLC  
  
By: \_\_\_\_\_  
Frank J. Martinez (FJM-2149)  
*Attorney for Plaintiff*  
*PABLO MEDINA d/b/a DESIGN IS CULTURE*

THE MARTINEZ GROUP PLLC  
55 Washington Street, Suite 253-C  
Brooklyn, New York 11201  
718.797.2341 Telephone  
855.553.7004 Facsimile  
FM@martinezzgroup.com





# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Maria A. Pallante*

Register of Copyrights, United States of America

Registration Number  
**TX 7-795-234**

Effective date of  
registration:  
October 2, 2013

## Title

Title of Work: Computer program for a VITRINA Typeface Font.

## Completion/Publication

Year of Completion: 2008

Date of 1st Publication: November 20, 2008

Nation of 1st Publication: United States

## Author

Author: Pablo Medina

Author Created: text

Citizen of: United States

## Copyright claimant

Copyright Claimant: Pablo Medina

231 E. 11th Street, 2-R, New York, NY, 10003, United States

## Limitation of copyright claim

Material excluded from this claim: computer program, Computer program entitled "Fontlab"

New material included in claim: text, Text of computer program for the Vitrina Typeface Font

## Rights and Permissions

Name: Pablo Median

## Certification

Name: Frank J. Martinez, Esq.

Date: October 2, 2013

Applicant's Tracking Number: 1418-10







# Desktop Font

Desktop fonts allow you to install the font in your computer's Fonts folder for use with applications that have a Fonts menu such as TextEdit, MS Word, Photoshop, etc.

Desktop fonts are priced based on the number of computers where the font is installed.

## End User License Agreement

### Standard License

#### 1. USAGE

The enclosed Font Product may be used on 1 computer and 1 printer only. If you wish to use the Font Product on more than 1 computer and 1 printer, you must obtain a separate "Multi-User Agreement" by contacting CUBANICA at 1-800-615-3533 or by purchasing a multiuser license at MyFonts.com.

#### 2. OWNERSHIP & COPYRIGHT

All title and copyrights in and to the Font Product (Including but not limited to images, photographs, animations, video, audio, music, and text incorporated into the Font Product), the accompanying printed materials, and any copies of the Font Product are owned by CUBANICA. All title and intellectual property rights in and to the content which may be accessed through use of the Font Product is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties.

#### 3. DERIVATIVE WORKS

If you reverse engineer, decompile, disassemble, or create derivative works from the Font Product, CUBANICA retains ownership of the Font Product and the font product cannot be resold or distributed.

#### 4. RENTAL

You may not rent or lease the Font Product.

#### 5. THIRD PARTY

The Font Product and this license may be transferred by you temporarily to a third party (i.e. service bureau). The third party must delete it from their computers after use.

{00023423 v.1}

## 6. BACKUP COPY

After installation of one copy of the Font Product pursuant to this license, you may keep one copy for backup or archival purposes only. Except as expressly provided in this license, you may not otherwise make copies of the Font Product.

## 7. TERMINATION

Any violation by you of this agreement shall constitute a termination of this license. In the event of termination, and without limiting any other remedies which may be available against you, you must immediately return the Font Product to CUBANICA and certify that no copy remains in your, or anyone else's possession.

## 8. WARRANTY

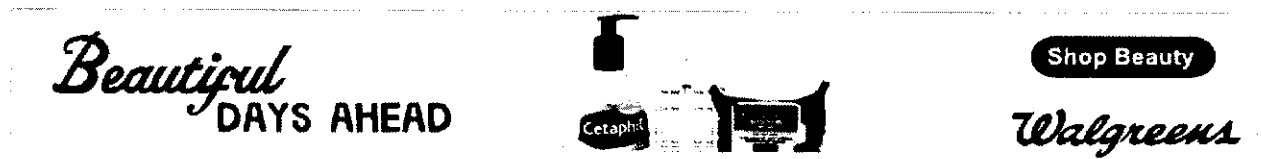
CUBANICA warrants for a period of THIRTY days from the date of your purchase of the Font Product that the Font Product will, under normal use, reproduce the Font Product when used on the type of equipment on which the Font Product is normally intended to be used. CUBANICA entire liability, and your exclusive remedy, under this paragraph shall be, at the option of CUBANICA, either to replace the Font Product at no charge to you, or to terminate this license and refund to you the purchase price.

THE FOREGOING PROVISIONS OF THIS PARAGRAPH STATE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES WITH RESPECT TO THE FONT PRODUCT. EXCEPT FOR SUCH LIMITED WARRANTY CUBANICA MAKES NO WARRANTIES EXPRESS OR IMPLIED AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE WITHOUT LIMITING THE FOREGOING, CUBANICA SHALL IN NO EVENT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FROM LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION) ARISING OUT OF THE USE OR INABILITY TO USE THE FONT PRODUCT.

Some jurisdictions do not allow the exclusions and limitations set forth herein, and therefore you may have additional rights and remedies under the laws of such jurisdictions.



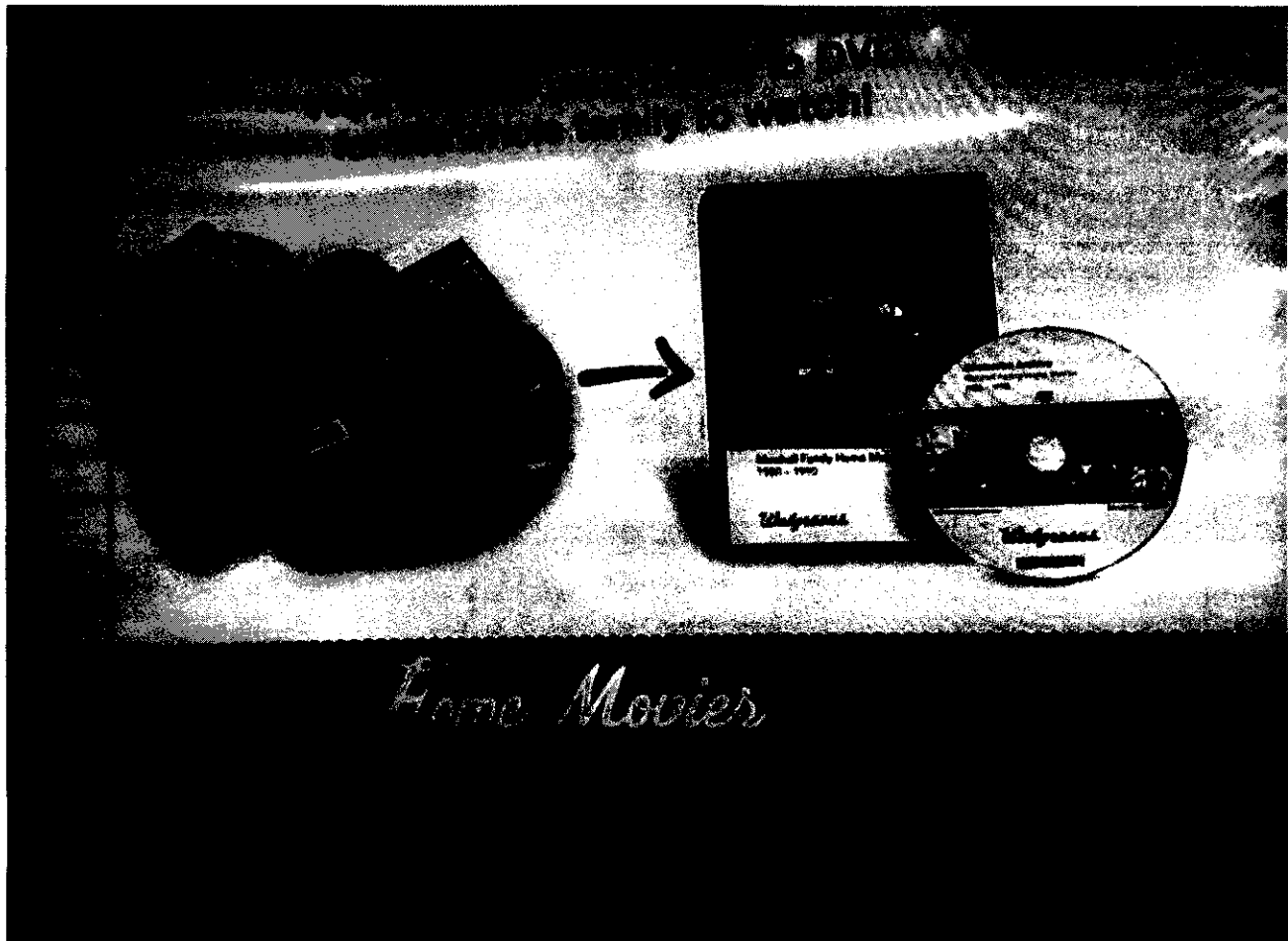




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